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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,824	09/04/2003	Harry E. Smith	RAIL	5171

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/654,824

Applicant(s)

SMITH, HARRY E

Examiner

Gary Hartmann

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10, 12 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 9 is objected to because of the following informalities: "RFID" should not be abbreviated. Appropriate correction is required.

Claims 9 and 11 are objected to because there are no limitations in the claims which in any way relate the devices recited in these claims with the apparatus claimed in parent claims 1 and 8, respectively. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mizuno (Japanese Patent 2001-34214).

Mizuno discloses an electronic display mounted in a concave section of a guard rail (Figure 8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, 9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (U.S. Patent 6,107,941) in view of Attwood et al. (U.S. Patent 3,468,567).

Jones teaches an electronic display, but it is not mounted on a guard rail. Attwood et al. teaches mounting signs similar to Jones to a guardrail (Figure 4, for example). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have mounted the device of Jones to a guard rail, as taught by Attwood et al., in order to convey information to a vehicle adjacent the guard rail, as is well known.

Jones teaches a message display (Figure 1, for example), it is computer controllable and it is solar powered.

The apparatus of Attwood et al. is set a protective distance into the guard rail (Figure 4, for example) and the guard rail is a W type rail, thereby meeting recitations of claim 3.

Regarding claim 9, it is well known to use these devices in order to, for example, provide information regarding the position of the guard rail to vehicles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used either or both of these devices for this purpose.

Regarding claim 11, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a voice recognition module with Jones in order to, for example, ease operation of the apparatus by a handicapped person.

Claims 1-9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehrig (U.S. Patent 4,723,758) in view of Jones, as applied above.

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Gehrig teaches positioning a display device into a concave section of a guard rail (Figure 3, for example), but the display device is not electronic. It is well known to use electronic display devices in conjunction with guardrails, as taught by Jones. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an electronic device with the guard rail of Gehrig in order to convey desired information, in accordance with the teaching of Jones.

The apparatus of Gehrig could be adjusted.

Regarding claim 7, because the range includes zero, no adjustment is needed to meet this recitation.

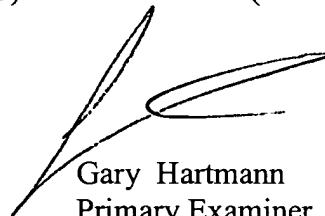
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Thursday, 9am-7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Hartmann
Primary Examiner
Art Unit 3671

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